



MINUTES

City Council Regular Meeting
February 2, 2021 - 7:00 PM

CALL TO ORDER

Mayor Rudy called the meeting to order at 7:01 p.m.

PLEDGE

ROLL CALL

Mayor:	Brian Rudy
Mayor Pro-Tem:	Mark Clark
Council:	Laura Speer
	Alicia Johnson
	Fred Neal
	Amanda Castle – Absent
	Tammy Mortenson

AUDIENCE PARTICIPATION

Tony Hayes, 3414 Trinidad Street, Evans, CO was present and spoke to Council about his property and code enforcement violations that he has received from the City. He asked for an addition six to eight months to bring his property into compliance.

Mayor Rudy advised that he will discuss the issue with staff.

APPROVAL OF AGENDA

Mayor Pro-Tem Clark made the motion, seconded by Council Member Johnson to approve the agenda as presented. The motion passed with all voting in favor thereof.

CONSENT AGENDA

1. Approval of the January 19, 2021 City Council Meeting Minutes
2. Consideration of Ordinance Number 742-21 to Amend Section 18.04.060.J.A and Section 18.03.010 of the City of Evans Municipal Code to Clarify the Intent of Setback Measurements for RV Parks—2nd Reading

3. Consideration of Ordinance Number 719-20, Amending the Land Use Code, Section 18.06.070 to Include Standards for Small Cell Wireless Facilities and to Clarify Sections of the Telecommunications Guidelines—2nd Reading

Mayor Pro Tem Clark made the motion, seconded by Council Member Neal to approve the consent agenda as presented. The motion passed with all voting in favor thereof.

NEW BUSINESS

4. Liquor License Renewal Hearing: El Tropicana Sport Bar and Grill, Inc.

Mr. Becklenberg turned the meeting over to Drew Lyman, Assistant City Attorney.

Drew Lyman introduced Heather Utrata, Community Development Technician and Officer Luis Garcia, who will be presenting the concerns of the Administrative Review Team regarding the liquor license renewal El Tropicana Sport Bar and Grill, Inc., 3520 11th Avenue, Evans, CO 80620.

Mr. Thomas Grant, Grant & Hoffman Law Firm, is representing Victor Joj Pon and Jose Bocanegra, owners of El Tropicana Sport Bar and Grill, Inc., who were also present.

Drew Lyman reviewed the Colorado Liquor Rules and Evans Municipal Code concerning liquor license renewals. He then presented evidence pertaining to unreasonable noise convictions against Jose Bocanegra, the license applicant for the El Tropicana, including the subsequent Evans Municipal Court Findings and Order from December 10, 2020 whereas Mr. Bocanegra pleaded guilty to violating the City's Municipal Code for unlawful noise on three separate occasions within the license period.

Heather Utrata presented evidence regarding premises use and building permit violations for using the establishment as an entertainment facility and/or nightclub establishment, in addition to altering the licensed premises by constructing accessory structures without the required building permit and allowing patrons to gather under the unpermitted, and presumably unsafe structures. Rocco DeLuca, SAFEBuilt, contracted Building Official for the City of Evans, testified that a building permit was submitted after the fact and has not been approved pending the submittal of as-built plans certified by a structural engineer. To date, none have been submitted.

Officer Garcia presented evidence regarding the numerous police dispatches to the licensed premises concerning rowdiness, noise, disturbances, and unlawful acts that took place including, but not limited to, unreported violence, fighting, loud music, assaults, DUI's, traffic accidents in the parking lot, over-intoxication of patrons and unlicensed security guards. Several video clips obtained from body worn camera footage and videos posted on social media were presented.

Evans Police Chief, Rick Brandt, also testified to the numerous complaints and police calls to the establishment within the limited time that the establishment has been in business.

That concluded evidence and testimony provided by the City. Drew Lyman then turned the hearing over to Mr. Grant to provide testimony from his clients and question any of the witnesses that testified on behalf of the City.

Council Member Speer then recused herself from the hearing at the request of Mr. Grant.

Mr. Grant was provided the opportunity to question witnesses and set forth evidence to support application renewal. He distributed a Memorandum to the Local Licensing Authority refuting each of the claims made by the City and responded to each accusation as set forth in the Notice of Determination letter dated January 15, 2021.

In regard to the accusation of unreasonable noise, he asked who determines what constitutes loud noise. The sound on the videos could have been manipulated.

In regard to the accusation of unpermitted building activities, testimony from Heather Utrata stated that the licensee substantially altered the licensed premises. The licensee did not substantially alter the licensed premises. The Evans Fire Protection District approved the use of the unpermitted structure.

In regard to the accusation of disturbances and other law enforcement problems, he stated that in the video presented by Officer Garcia depicting an assault, he could not see the assault in the eight seconds of the video. Testimony from Officer Garcia indicated that cocaine was found on individuals that admitted being at the establishment. However, there is no proof that the cocaine was present at, or from, the establishment. In the video presented by Officer Garcia depicting a fight in the parking lot, it is not clear if the fight was broken up by Police or an employee of the establishment. Testimony from Officer Garcia indicated there was underage drinking at the establishment. There is no evidence of underage drinking. Testimony from Officer Garcia indicated several patrons were arrested for Driving Under the Influence after leaving the establishment. He believes that is due to the proximity of the establishment to the Police Department.

Mr. Grant explained that his clients are still new to running a restaurant establishment. They were issued their local liquor license in November 2019 and they are still learning. He has explained to his clients that they need to have the Police Department involved and all incidents need to be recorded and his clients have agreed to do that.

Testimony was then provided from Victor Joj Pon, co-owner of the establishment, with the assistance of a Spanish interpreter by answering questions from Mr. Grant. Mr. Joj Pon has been involved with the business for one year and two months. They have been closed for the last month and a half, but he is usually there otherwise, both he and Jose Bocanegra. If the Local Licensing Authority renews the liquor license, they will work with the City on the building and security. He believes that a private security company will help. They will be required to be trained and will help with people that are drunk. They will be committed to work with the Police Department. They are working to make sure that their employees are TIPS trained. He added that they are new to this business and they have a learning curve and they are learning from their mistakes and will not do it again. They want to work with the City and Police. They pay their taxes. They want to take care of everything that is necessary and they are learning.

Testimony was then provided from Rolando Marroquin, landlord of the licensees, by answering questions from Mr. Grant. Mr. Marroquin has owned the property since 2018. He has improved the property from the previous owners. The original one year lease with the licensees has been renewed. He has spoken with the licensees on how to improve the relations with the City. He has helped with translating for the licensees, reviewing applications and with compliance matters. He has been to the establishment twice while they were operating. The first time was around 10:00 p.m. The establishment was busy and he was sitting on the back patio. There were about 30 patrons and there was music. He was there to listen to how loud the music was. He was there for about 45 minutes. In his opinion the music was not that loud while he was there. The second time, he was there from 11:00 p.m. until about 1:00 a.m. The level of the music was reasonable to him. In his dealing with the licensees, they have been fair and have paid their rent. He has not been present during any contact the licensees has had with police. He is aware of the structures that were constructed and believes they are an improvement to the property. He is also aware that a building permit has been submitted and he is helping the licensees work with The Rocky Mountain Group, an architectural firm. He also has an agreement now with the licensees that the property will not be used for live music.

Drew Lyman stated that the review of a liquor license renewal is different from a new license application. Therefore, good moral character and needs of the neighborhood served are not relevant to this proceeding. The question is whether there is competent evidence to establish that the liquor laws have been violated. Evidence has been provided, including a guilty plea from Mr. Bocanegra to three violations of the Evans Municipal Code, Section 9.16.045 (Unlawful Noise) that separately occurred on various dates at El Tropicana Bar and Grill located at 3520 11th Avenue, Evans, CO. By pleading guilty, the Defendant admits the facts regarding the unlawful noise resulting in citations that are including in the packet. That alone is sufficient evidence to determine renewal or non-renewal of a liquor license.

Testimony was then provided from Jose Bocanegra, co-owner of the establishment, by answering questions from Mr. Grant. Mr. Bocanegra stated that he is one of the owners and has operated the bar for a year and two months. He and his partner started the business to do something for a living. He is a single father. He worked in the oil fields for almost 10 years. His daughter grew up with no father at home. He decided to do this so he could be with her, drop her off and pick her up from school. He never thought this would be so hard, but they are learning. They will try to do better with everything. They are like babies. Babies learn by being taught. They are learning from everybody. They started the construction on the patio without a permit. They did not know they needed a permit, they were confused. The structures were being constructed for the noise, to keep the noise from traveling. They are working with the engineers. The plan is to cover the walls to try and keep the noise inside because they received a couple complaints about the noise. He agrees to not use the establishment as a concert venue. They made a mistake. They paid a lot of money to the band that they brought in from Mexico. He called the City to try and get a permit and was told no, he was too late to get a permit. They made a mistake and allowed the event to happen. They are willing to work with the City and follow the rules. He believes they are now doing what the City has asked for and following the rules and the codes going forward. He added that the construction is to keep the noise inside the property. He knows they made mistakes, they are learning still. One year is not a lot of time to them to learn everything. Due to COVID-19, people are home. When they re-open, people will want to go out and hang out. It is hard for people to be stuck in their home. So when they get out, they want to

drink and they want to enjoy. This has not been a normal year. He has tried to work the Police Department all the time and do exactly what he has been told. He calls them when he had issues and he cooperates with them. He does not tell them to come back tomorrow. He has tried to do exactly what the police tell him.

Testimony was then provided from Yadira Medina, employee of the establishment, with the assistance of a Spanish interpreter by answering questions from Mr. Grant. Ms. Medina has been working at El Tropicana for eight months. She started working in the kitchen and moved up to working next to the owners running the administration by learning how to run the business and learning to keep the proper order and working very hard. She was not present during any disturbances or fights at the bar. She works from 4:00 p.m. until closing. She has seen the owners call police and he tells her everything will be alright because the police are coming. They do what is necessary. She was there when the fire department was there and authorized the event to take place outside on the patio. Two of the firemen that were there could not give her an answer as to whether the event could take place, so they called the Fire Chief to come out. The Fire Chief inspected the premises and asked her what kind of security would be at the event. She told him that they were working very hard to make sure that the event would be peaceful and that the security company they hired would do whatever it takes to make sure it will be orderly. She is willing to take whatever training is necessary that may be required by the City in order to move forward and to learn from the mistakes they have made.

That concluded testimony provided by the defense.

Mr. Grant wanted to preserve his client's right to appeal any decision rendered by the Local Licensing Authority. He questioned the evidence of convictions of local code violations being shared and if it is appropriate evidence to be used in a civil proceeding. He stated that not all of the evidence presented to the Local Licensing Authority was shared with him. He only saw two of the eight videos presented prior to the hearing. He does not believe that the evidence presented represents violations of the liquor law, which includes serving persons who are underage or serving visibly intoxicated persons. These were building code violations or City Code violations regarding noise. He asked the Local Licensing Authority to think outside of the box and how the City's concerns can be met while giving another chance to a business that is getting started. The owners are willing to work with City staff moving forward.

Mr. Grant suggested to the Local Licensing Authority to grant the renewal of the liquor license to the licensees by stipulation which could include a three month suspension with two months held in abeyance on the condition of no new violations during the next 12 months, TIPS training be required for the owners and all employees, the licensees would be prohibited from having live music and the establishment could not be used as a concert/entertainment venue. They have also hired new security. He added that if the renewal is granted and a temporary suspension of the license is issued under a show of cause, that would give the licensees an opportunity to sell the establishment as opposed to just taking the license. Another consideration is that they employ about ten regular employees and they will lose their jobs if the license is not renewed. If the renewal is granted, only two things can happen; they fail and the City takes the license or they improve and benefit the City.

Mayor Pro Tem Clark asked staff if, prior to June 7, 2020, there were any calls or disturbances received since the establishment opened in September or October, 2019. Drew Lyman responded that he does not have that information. The issues began with the June 7, 2020 incident, which was a Class 1 or Class 2 felony when the bottle was thrown at a patrons face. The licensees were obligated to report that, which they did not. That is what initiated Officer Garcia's contact with the licensees. Since the June 7, 2020 incident, there has been 41 incidents of police activity at the establishment. Staff could get the information from the Police Department, but he does not have it now.

Mayor Pro Tem Clark asked staff about the video played regarding the event on July 4, 2020 where the driver was stopped for a DUI who was 20 years old, who did state that he was coming from the El Tropicana bar. Knowing that he was 20 and was arrested for DUI, was the incident investigated for El Tropicana selling to a minor. Officer Garcia stated no, the man admitted he had been drinking, which was sufficient for the criminal case.

Mayor Pro Tem Clark stated that if the City chose not to renewal the liquor license, they would be out of business. He then asked staff if it is possible to renewal the liquor license with conditions. Scott Krob, City Attorney, advised the Local Licensing Authority of their options available which included to renew the liquor license, deny the license or renew the license with conditions. He would recommend that if the Local Licensing Authority were to renew the license, that conditions be placed on that renewal.

Mayor Rudy asked if the license renewal were denied, how long would the owners have to wait to apply for another. Scott Krob believes that they would have to wait one year to apply for a new license.

Mayor Pro Tem Clark asked the licensees about the times that the hired security would be at the establishment and how many security staff would be hired. Mr. Bocanegra responded that they have worked with three different security companies already. The security company is trying to get a license to work in the City. They are open Thursday through Sunday. They usually have four on Thursday, six or seven on Friday, eight on Saturday and four or five on Sunday. They do not have any security guards in the morning since business is slow in the mornings.

Mayor Pro Tem Clark asked staff if similar types of businesses in Evans get a similar amount of calls or complaints as El Tropicana. Chief Brandt stated that the City does not have too many similar businesses. The closest would be Lit'l Bit Bar and Grill on 23rd Avenue. He reviewed their call history over the last three years. There were no noise complaints in that three years. There have been approximately 50 compliance checks with about 20% of those being requested by staff. There has been a handful of disturbances, but not of the frequency that the City is experiencing with El Tropicana.

Council Member Mortensen stated that a lot of testimony from the licensees was that they are learning. It has been 14 months. She believes that police officers, Chief Brandt and City staff have tried to point things out concerning the violations at the establishment. She asked how much more time do the licensees need to learn. She asked if a timeframe has been established. She understands there is a lot to learn, but 14 months is a long time. Even up until November 22, 2020, security was not contacting the Evans Police Department. How much longer are the licensees looking at to even out the learning curve. Mr. Grant responded that the situation is like a child when they get in trouble. At this point, he believes they understand that they are on the

brink of losing everything. The City now has their attention and there is no room for error or additional mistakes. He thinks that the City will see them pick up the learning curve very quickly.

Council Member Neal stated that he had staff do some research on the prior business, The New Plantation. Drew Lyman stated that there were three police calls within the last two to three years that The New Plantation was in business.

There were no additional questions of staff or the licensees.

Mayor Pro Tem Clark stated that he is on the fence. He understands that the licensees stated they are willing to make a lot of changes to comply and have a successful business. He understands that the establishment is a sports bar and grill and that people are expecting live music and to make a lot of noise and have a good time. He is concerned about the noise complaints, especially with the proximity of the apartments to the establishment, just to the south. He is concerned with the amount of calls within the last six months. He does not own a business so he cannot speak of the growing pains of owning a business. His biggest concern is the number of calls to the establishment.

Council Member Johnson stated that it is alarming in everything that has been presented, everything that has happened at the establishment and the noise level. She also sees that there has been an attempt to try to improve things. They are a new business and a new business within a pandemic, which is difficult. She leans towards renewing with a probationary period with conditions because they are new and are taking steps to try and improve, including that they will not act as a music venue or concert hall.

Council Member Neal stated that this was a transfer of the license in 2019, which he was hesitant about, but he decided to give them a chance. Based on the historical information provided on the New Plantation, which was considered a biker bar, and the number of incidents El Tropicana has had in six months is evident. He is not in favor of renewing the liquor license.

Mayor Pro Tem Clark added that the City has had other businesses that have come before the Council for similar issues. The City worked with those businesses and got them cleaned up. He feels that the City should do the same with this business. The licensees seem willing to comply and work with the City.

Mayor Rudy understands Mayor Pro Tem Clark's view, but he has a different view. He is not sure working with this business is going to help. A stop work order was posted and they took it down. Another stop work order was posted and they took that one down too. Officer Garcia has explained to them what they need to do to stop the police presence at the establishment. He believes the City has worked with the licensees. He is a small business owner and he knows that there are learning curves, but thinks that 14 months is a lot of learning curve. He believes that staff has established that the licensees have broken the liquor rules and laws. The question of how can you tell how loud the sound is on a video was answered when someone 4,000 feet away could hear it. As far as the testimony that the Fire Department approved the unpermitted structure and event, they may have. However, the Fire Department is not part of the City of Evans, the Building Department is. As much as he respects small business, he will be voting not to renew.

Council Member Neal added that he has been very impressed with Officer Garcia and has seen the way he interacts with people by working with people. Officer Garcia has done his best to work with the licensees, but they have been non-compliant.

Upon finding that the evidence supported violations of the applicable liquor laws, Mayor Rudy made the motion, seconded by Council Member Neal to deny the liquor license application of El Tropicana Sport Bar and Grill, Inc. Motion Passed 3-2 with the following Roll Call vote.

Roll Call Vote:

AYE - Rudy, Neal, Mortenson

NAY - Clark, Johnson

ABSENT - Castle

RECUSED - Speer

NEW BUSINESS

5. Consideration of Award of Bid: 2021 Crack Sealing Contract

Mr. Becklenberg reviewed the item as detailed in the agenda packet. He then turned the meeting over to Mark Oberschmidt, City Engineer.

Mark Oberschmidt reviewed the proposed maintenance contract, which is an extension from the previous year, for crack sealing in the amount of \$150,000. The contract is a 6% increase from last year for inflation. He reviewed the areas included in the contract.

Mr. Becklenberg added that the contract approved last year included three one-year renewal options.

Council Member Speer confirmed that the proposed contract is a one year renewal and asked if staff is satisfied with their work. Mark Oberschmidt responded yes, staff is happy with their work. Council Member Speer added that she requested from staff to clarify the priorities, which staff had done.

Council Member Speer made the motion, seconded by Council Member Neal to award the 2021 Crack Seal Contract to Crasco, LLC in the not exceed amount of \$150,000, and to authorize the Mayor's signature on the contract. The motion passed with all voting in favor thereof.

REPORTS

6. City Manager

There was no City Manager's report.

7. City Attorney

There was no City Attorney's report.

AUDIENCE PARTICIPATION (general comments)

There was no audience participation.

Mayor Rudy recessed the meeting at 9:40 p.m.

Mayor Rudy reconvened the meeting at 9:51 p.m.

EXECUTIVE SESSION

8. To Discuss Specific Legal Questions with the City Attorney Related to the Wastewater Treatment Plant Capacity pursuant to C.R.S. Section 24-6-402(4)(b)

Mayor Pro-Tem Clark made the motion, seconded by Council Member Johnson to adjourn into executive session at 9:51 p.m. to discuss specific legal questions with the City Attorney related to the Wastewater Treatment Plant capacity pursuant to C.R.S. Section 24-6-402(4)(b). The motion passed with all voting in favor thereof.

The meeting reconvened at 10:30 p.m.

Mr. Krob noted for the record that the executive session that Council concluded was within the scope of the statute and that he was present for the duration of the discussion, so the discussion is subject to the attorney client privilege.

ADJOURNMENT

The meeting was adjourned at 10:30 pm.


City Clerk



CITY OF EVANS – MISSION STATEMENT

“To deliver sustainable, citizen-driven services for the health, safety, and welfare of the community.”

It is the policy of the City of Evans that all programs and activities shall be accessible to, and usable by, persons with disabilities. Persons needing assistance shall contact the Safety & Risk Management Manager at the City of Evans. Please provide three to five business day's advance notice so we can adequately meet your needs.